

JUSTIFICATION SHEET

FINAL

DEPARTMENT: Labor and Industrial Relations

TITLE: A BILL FOR AN ACT RELATING TO THE HAWAII CIVIL RIGHTS COMMISSION.

PROPOSE: This bill would remove the right to sue for both employers and employees. It would also appropriate funds to hire additional staff for the Hawaii Civil Rights Commission ("HCRC"). Additionally, this bill would also expedite and streamline the caseload of the Hawaii Civil Rights Commission.

MEANS: Adds a new section to chapter 368, and amends sections 368-12, 368-13(2) and (b), and 368-16, Hawaii Revised Statutes.

JUSTIFICATION: The Hawaii Constitution, Art. I, Sect. 5, states that "no person shall ... be denied the enjoyment of the person's civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry." The HCRC and its administrative hearing process were created by the Legislature to carry out this constitutional provision.

The HCRC considers its mission to be a very honorable endeavor designed to promote fairness and equality in this great state. The HCRC intends to utilize every resource at its disposal to fulfill its mission.

In SCI Management v. Sims, 101 Hawai'i 438 (2003), the Hawaii Supreme Court ruled that if the HCRC awards legal relief to a victim of discrimination, the losing respondent can request an entirely new circuit court jury trial. This Supreme Court case provides that a losing respondent gets a second chance to prevail by presenting the same case again to a jury. Allowing the losing respondent to submit the case for a second

time for a jury to decide the case anew will create additional burdens and render the HCRC largely ineffective.

In SCI Management, the Hawaii Supreme Court suggested that a statutory scheme which prohibits both complainants and respondents from withdrawing or removing themselves from the HCRC process may not violate the Hawaii Constitution. Only a few months ago, Massachusetts highest court decided Stonehill College v. Massachusetts Commission Against Discrimination, 441 mass. 54G, 808 N.E. 2d 205 (2004). It held that the constitutional right to a jury trial did not apply to parties in civil administrative proceedings to enforce its anti-discrimination laws. There are cases other states reaching the same result.

The bill amends the HCRC statute to address the Hawaii Supreme Court's concerns set forth in SCI Management. Under the proposed bill, neither party can obtain a right to sue, or otherwise withdraw or remove itself from the HCRC administrative process. Moreover, the HCRC decision can only be appealed to the Hawaii Supreme Court.

Impact on the public: This is a fundamental change that affects the current rights of both complainants and respondents. The Executive Director of the HCRC will continue to issue notices of dismissal and right to sue in cases dismissed under H.A.R. §12-46-11, so that complainants in "no cause" dismissals will continue to have access to the courts. Additionally, cases will be processed more efficiently. Equity will be restored to the HCRC for employers and employees.

Impact on the department and other agencies: This bill will eliminate the need for the Executive Director to try a case twice, first before the Commissioners and a second in circuit court by jury trial if a

respondent appeals. It would also prevent both the complainant and respondent from withdrawing from the HCRC process. As a result, it is projected that such statutory changes will result in a 25% increase in cases for full HCRC investigation and a 100% increase in cases going to an HCRC hearing. It is the conservative estimate of the HCRC that the proposed statutory changes will necessitate the hiring of 3-5 more investigators and 3 more staff attorneys.

The proposed statutory changes cannot realistically be implemented without the necessary funding to undertake these additional responsibilities. Notably though, there will be substantial cost savings for the judiciary in that a substantial number of cases ordinarily brought in circuit court will now be resolved by the HCRC.

General Fund:	\$600,000.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	LBR-153.
OTHER AFFECTED AGENCIES:	None.
EFFECTIVE DATE:	July 1, 2005.